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No. 502

In the Supreme Court of the United States

OCTOBER TERM, 1969

YALE STEIN,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS and JOHN W. LACEY,

Appellees.

On Appeal from the Supreme Court of the State of Illinois.

JURISDICTIONAL STATEMENT

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INDEX

	PAGE
Opinion below	1
Jurisdiction	2
Statutes involved	6
Questions presented	7
Statement	9
The questions are substantial	18
Conclusion	33
Appendix A	App. 1
Appendix B	App. 3
Appendix C	App. 9
Appendix D	App. 10

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Opinion Below

The *final order* of the Supreme Court of Illinois, the highest court of appeal in and for said State of Illinois, dismissing the appeal of Appellant to that Court (App. A, *infra*) is unreported.

Jurisdiction

1. This is an action brought under Chapter 122, (The School Code), Article 26, ("Pupils-Compulsory Attendance"), Ill. Rev. Stat. (1967), set out herein at Appendix B. Said action was commenced October 7, 1968 charging that Yale Stein, "having custody or control of a child of 13 years, to wit, Joy Stein, and notice having been sent to said defendant of the said child's truancy, the said defendant wilfully permitted the said child to persist and continue in her truancy within school year." (Tr. 195). There was an Arrest Warrant immediately issued for the arrest of Yale Stein "for the offense of Ch. 122, Sec. 1-10 Non-Compliance" (Tr. 196). On October 21, 1968 the Circuit Court of Cook County entered an order that *"defendant appears on limited appearance, without prejudice"*, that *"motion to quash the warrant granted"* and that "leave to file motion to strike complaint before 12-4-68" (Tr. 197). *On January 15, 1969, pursuant to leave of Court, Yale Stein (the father of the 13 year old Joy) filed his "Motion, under Special and Limited Appearance, to Quash and Dismiss", supported by affidavit and exhibits* (Tr. 8-52a, incl.), *wherein was drawn into question the validity of said statutes of Illinois and said purported proceedings thereunder as being repugnant to the Constitution and laws of the United States, and wherein titles, rights, privileges and immunities were specially set up and claimed under the Constitution, statutes and authority exercised under the United States* (Tr. 8-52a, 80, 81, 82, 83, 84, 85, 91, 92, 98, 99, 102, 104, 105, 108-136, 138-169, 174, 175, 178, 182, 183, 185, 186). *The Circuit Court denied said Motion, under Special and Limited Appearance, to Quash and Dismiss" on January 15, 1969, and ordered trial set for January 21, 1969* (Tr. 53) *despite the fact that it knew at the time that the defendant was on a special appearance, had not*

made any general appearance, excepted to the ruling, and intended to appeal (Tr. 185-186), so as to not be deprived of his substantial rights by virtue of Sec. 20(3) of Chapt. 110, Ill. Rev. Stat. (1967) (App. C).

Defendant filed his Notice of Appeal to the Supreme Court of Illinois on January 20, 1969 (Tr. 55). *On January 21, 1969, the Circuit Court ordered the cause transferred to the Supreme Court of Illinois, accordingly.* (Tr. 57). On *March 6, 1969*, the People of the State of Illinois moved for and secured from a Justice of the Supreme Court of Illinois an Order granting them leave to file a *short record* and a *motion to dismiss said appeal*, with leave to defendant-appellant to file a responsive pleading and report of proceedings by March 18, 1969, holding said motion to the full court for consideration in the March, 1969 Term. (Tr. 2, 63, 64, 65). *On March 18, 1969 Yale Stein filed his "Answer, Pursuant to Leave of Court, in Opposition to Motion of State to Dismiss this Appeal"* (Tr. 189-210, incl.), *wherein were also drawn into question the validity of statutes of Illinois and said purported proceedings thereunder as being repugnant to the Constitution and laws of the United States, and wherein rights, privileges and immunities were specially set up and claimed under the Constitution, statutes and authority exercised under the United States* (Tr. 189-210, incl.). He also prayed therein that *"the State's Attorney of Cook County be disqualified herein on account of conflict of interest and the other facts evident herefrom, and that a special prosecutor be appointed to represent the People herein and to investigate the facts herein and do whatever is required in the interests of justice, under supervision of this Court, to remedy the situation complained of; and for such further and alternative relief as may be just in the premises" (and prayed that the motion of the State to dismiss the appeal be denied).* (Tr. 194).

2. *On March 25, 1969 the Supreme Court of Illinois entered its final order dismissing said appeal.* (Tr. 211).

On April 15, 1969 Yale Stein presented his motion, "in the interests of justice and so as to protect and preserve, and not prejudice, the substantial rights of said Defendant-Appellant, and under the facts as set forth in the Affidavit . . . ", to extend time within which to file *motion for reconsideration* of said order dismissing the appeal, to *stay the mandate, to order the Clerk to transmit the record for work on such motion for reconsideration, and to allow him to again file instanter the (full) praecipe record (previously filed by him by mail on March 24, 1969) in its damaged condition as received back from the Clerk on April 14, 1969*, etc. (Tr. 213-221). Said motion was *denied* under date of April 17, 1969. (Tr. 212).

On June 23, 1969 Yale Stein filed with the Supreme Court of Illinois his Notice of Appeal to the Supreme Court of the United States and included therein his request to said Clerk the preparation, certification and providing for transmission to the Supreme Court of the United States the entire record as prescribed by the Rules of this Court. (Tr. 222).

On June 12, 1969 he also filed with the Supreme Court of Illinois his Motion for Leave to File Petition for Writs of Mandamus and Prohibition, but said Motion for leave to file was also denied by the Supreme Court of Illinois on June 18, 1969.

3. 28 U.S.C. Section 1257 (2) is believed to confer on this Court jurisdiction of this appeal. If, however, this Court should consider that the mode of review herein should rather have been by petition for certiorari and that this appeal from said final judgment of the Supreme Court of Illinois (the highest court of said State) was thus im-

providently taken as an appeal rather than by such a petition, then, under 28 U.S.C. Section 2103, the papers on which this appeal was taken (it is alternatively prayed) shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court under the applicable statutory provisions, including, though not necessarily limited to, 28 U.S.C. Section 1257(3).

On June 26, 1969 Mr. Justice Thurgood Marshall Ordered herein that the time for docketing an appeal under Rule 13 and for filing the record herein be, and it was thereby, extended to and including August 22, 1969.

4. Appellant respectfully submits that under the circumstances herein, wherein the Supreme Court of Illinois (the very highest court of appeal in Illinois) has thus and in this manner either declined to review or in effect conceded to be without power to review such order of denial of such a special appearance motion and proceedings, and most particularly where under the statutes of Illinois aforesaid appellant would be statutorily and automatically held to have *waived* the errors of the lower court in said order of denial (including the constitutional privileges, immunities and rights and claims of unconstitutionality of statutes therein drawn into question as aforesaid) if he would appear generally, or face arrest for failure to appear generally if he did not, this Supreme Court of the United States has the authority under 28 U.S.C. Section 1257 to review either by appeal or on writ of certiorari not only said final judgment of the Supreme Court of Illinois dismissing said appeal to that court as aforesaid, but also, as part thereof, the said order of the Circuit Court denying said Special Appearance motion aforesaid and the proceedings in the Circuit Court in connection therewith. *U. S. v. Richmond* (DC-Conn.), 177 F.Supp. 504 Aff'd. 279 F (2d) 170. Under the facts and circumstances herein, the

effect of said order of denial by the lower court and the dismissal of appeal by the Supreme Court of Illinois was to deny the claims of invalidity of said statutes and of the federal constitutional questions drawn in question, and this was sufficient under the circumstances herein for this Court to have jurisdiction. *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 73 L.Ed. 184, 49 S.C.R. 61, 62 A.L.R. 785, aff'g. 241 N.Y. 405, 150 N.E. 497, 43 A.L.R. 909, which aff'd. 213 App. Div. 414, 210 N.Y.S. 269. Where a case involving a federal constitutional right could not be taken to a higher state court, as here, it could be taken directly to the United States Supreme Court. *Tucker* v. *Texas*, 326 U.S. 517, 90 L.Ed. 274, 66 S.C.R. 274; *Woods* v. *Neirstheimer*, 328 U.S. 211, 90 L.Ed. 1177, 66 S.C.R. 996. It is now fundamental that once established, avenues of appellate review must be kept free of unreasoned distinctions that can only impede open and equal access to the Courts. *Williams* v. *Oklahoma City*, 37 U. S. Law Week 4524 (9 June 1969). *Griffin* v. *Illinois*, 351 U.S. 12; *Douglas* v. *California*, 372 U.S. 353; *Lane* v. *Brown*, 372 U.S. 477. *Draper* v. *Washington*, 372 U.S. 487, *Rinaldi* v. *Yeager*, 384 U.S. 305, 310-311.

STATUTES

(App. B)—Chapt. 122, Art. 26, Sec. 26-1 thru 26-11, Ill. Rev. Stat. (1967).

(App. C)—Chapt. Sec. 20(3), Ill. Rev. Stat. (1967).

(App. D)—Chapt. 122, Sec. 29-1, 29-2, 29-3, 29-5.

QUESTIONS PRESENTED

Whether, where a court has *granted leave* to defendant in a *quasi-criminal* case to file and be heard *on a special appearance motion to quash and dismiss*, and where in such motion (supported by affidavit) there were *raised and drawn into question substantial federal constitutional rights, privileges and immunities*, and where the court declines to order the state to answer but instead, although having quashed the warrant, denied the special appearance motion to quash and dismiss the complaint and proceedings, and where the *statute on special appearances* provides that if defendant participates further in such proceedings he shall have *waived* thereby errors of the court is such denial, such court constitutionally can *compel* defendant to participate in further proceedings by ordering him to trial.

Whether, under such facts, defendant can constitutionally be deprived of a right to appeal, or protection or relief from a higher court.

Whether under such facts and particularly under the circumstances involved herein, including but not limited to the denial of right to defendant to have witnesses compelled to appear on said motion (including the *suburban chief of the state's attorney's office* who had agreed to be and was subpoenaed and came to the courthouse to testify in defendant's favor on said motion, but who was then secreted by the state in another room and not permitted to enter or testify to facts in defendant's favor on the motion, nor would the court order or permit him so to do, although it was known and obvious to the state and court that the affidavit in support of the motion had largely to do with assurances, conduct and statements of the witnessed chief), the defendant is denied his federally guaranteed rights as contained in the Bill of Rights.

Whether, where the state has held itself out to provide, as a major part of its educational services, free and safe school bus transportation of school pupils residing 1½ miles or more from their assigned schools, and where the state constitution requires that the state provide a thorough and efficient system of free schools, whereby all children of the state may receive a good common school education, and where out of approximately 1,340 school districts in the state there are only about six (6) who are denied and deprived of such free services, such denial is contrary to and violates the equal protection clause of the fourteenth amendment.

Whether under the above facts, and where the father of a 13-year old child (thus deprived of such free safe school bus transportation, although residing more than 1½ miles from her assigned school) has been exercising his first amendment and other rights, peaceably, the state can by its agents (including a county official who has responsibility over school bus transportation but who doubles as a county truant officer) (1) permit such 13-year old child to be ejected from the school bus and battered by the school bus driver, (2) cause the child, when she was even then sent to school by cab, to be stripped of all privileges, including the right to eat, enter the lunch-room, use a locker, use a public phone to make a call home for help, and then (after the child was rescued by her mother with the help of sheriff's police) where the father has promptly appealed to the state's attorney for protection and assistance in providing the child with the schooling due her, and where the father has been told by the suburban chief of the state's attorney's office to wait while he, the state's attorney is determining how to afford such protection, a state can then be said same purported "truant officer" and state's attorney, knowing said facts,

try to arrest the father under the truancy laws, without violating the federally guaranteed constitutional rights of the father and child.

Whether, under the facts herein, a state's attorney, who is statutorily charged with duties to prosecute for, defend and advise county officers, and who is on the other hand sworn to uphold the federal constitution and to perform all of his duties faithfully and well, and who, however, also has a primary duty to the people to defend them and their rights, including those against county officers as here, and against others, and where he holds the keys to the Grand Jury, and who also must be a lawyer, and where conflicts of interest are obvious, as here, can, under such circumstances make due process and equal protection unavailable to the citizen, as here.

Whether, a compulsory education act violates the federal constitution, including the due process and equal protection clause of the Fourteenth Amendment, where it calls for charging a parent with *permitting* a child to *persist* in truancy (which could lead to taking of the child from her home or even incarcerating her) without any due process rights whatsoever to the child who is thus, as here, stigmatized, slandered, characterized and condemned, wrongfully and in disregard of all of the rights of the child.

Statement

Yale Stein, Appellant, is and was at all times pertinent hereto, a lawyer, citizen, elector and taxpayer of Illinois, and of Maine Township and of East Maine School District #63 therein, residing in Morton Grove more than 1½ miles away from East Maine Junior High School, in and maintained within said district. His daughter, Joy Stein, then 13 years of age and residing with appellant and the

rest of the family, was at all times pertinent hereto assigned for attendance to said Junior High School, which could not be reached by walking, one way, less than one and one-half miles, nor was any adequate public transportation available.

Article VIII of the Constitution of Illinois, at Section 1 thereof, provides as follows:

"Article VIII

EDUCATION

Sec. 1. Common school system provided.
The general assembly shall provide a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education . . ."

The State of Illinois, in its Illinois Blue Book (1963-1964) (p. 422) held out officially that free transportation of school pupils residing a distance of one and one half miles or more from their assigned school has become one of the major affiliated educational services offered by the public schools of Illinois, and one which the Illinois Statute has made obligatory on the part of school boards in community consolidated, community unit, consolidated, and consolidated high school districts, and that it is the responsibility of the Office of the Superintendent of Public Instruction to establish standards of qualification in the area of transportation which: promote and insure the safety and comfort of pupils; require inspection of all vehicles used in the transportation of pupils; insure qualified drivers; and establish transportation records and statistics.

Chapter 122, Section 29-3, Ill. Rev. Stats. (1967) (App. D, *infra*), *requires* that school boards of community consolidated districts, community unit districts, con-

solidated districts and consolidated high school districts *shall* provide *free* transportation for pupils residing at a distance of one and one half miles or more from any school to which they are assigned for attendance maintained within the district except where certified that adequate public transportation is available.

Chapter 122, Section 29-1, Ill. Rev. Stats. (1967) (App. D, ..., *infra*) provides that school boards may provide free transportation for pupils. Section 29-5 of said Chapter (App. D ....., *infra*) provides that any school district maintaining a school which provides transportation *meeting the standards of safety, comfort, convenience, efficiency and operation prescribed by the Superintendent of Public Instruction* for resident pupils *who reside at least 1½ miles as measured by customary route of travel from the school attended* shall be *reimbursed* for 50% of the cost of the transportation or the other amounts as therein scheduled.

Out of the approximately *1,340 school districts in the State of Illinois*, there are *only a half dozen* school districts who are also common school districts, who, like District #63, *according to the District's attorney's own statement to the Circuit Court herein*, do not furnish bus transportation! (Tr. 175)

Despite the foregoing, and despite the fact that no rational, reasonable or constitutionally justifiable basis exists or could exist for such gross discrimination or deprivation of or against Joy Stein or her father, District #63 (1) caused students and/or their parents, even where they reside more than 1½ miles from the school attended and had no adequate public transportation, to pay from $55.00 per school year to over $60.00 per school year per transported pupil for bus transportation to and from school; (2)

wilfully failed to apply for reimbursement from the state therefor, depriving appellant and his daughter of the benefits and savings to which they were entitled, (3) wilfully failed to require the school bus operator to qualify for or secure or display safety stickers as issued by the Superintendent of Public Instruction to those meeting the prescribed safety and other standards, and (4) wilfully failed to provide equal protection of the laws, including the right to free transportation as part of the free schooling to which they were entitled, as well as with respect to the safety, comfort, convenience, efficiency and operation standards prescribed under the law by the Superintendent of Public Instruction for the State of Illinois. Under these conditions and this situation if one had ten children requiring transportation, bussing alone, even where they reside over 1½ miles from the school, would cost him some $600.00 out of his own pocket, over and above amounts paid through State, County and School District taxes, without reimbursement; *it is obvious that such a "system" must necessarily have the effect of interfering with, if not indeed making impossible, integration in said suburban area's schools, and also deprives appellant and his daughter of their equal protection rights.* Other parents and children in the State, some as close as just blocks away from appellant's residence are bussed, where they reside over 1½ miles from the school, free of charge. In various instances this is the case even where they reside within 1½ miles.

It is and has been throughout the contention of appellant that such totally unjustifiable, unreasonable, capricious and irrational, as well as utterly unconscionable, discrimination against the pupils and parents of pupils in District #63 (and in such six or seven districts out of the tremendous numbers of school districts in the State)

is unconstitutional, in violation of the Fourteenth Amendment to the United States Constitution as applied to Article VIII of the Constitution of Illinois and to the transportation provisions of the School Code (App. D, ..., *infra*), and as applied to Illinois constitutional bans against special legislation and other constitutional requirements.

Accordingly, appellant, as a lawyer, elector, taxpayer, father, and citizen, peaceably and by legal means, had been fighting such injustices through the Courts and through his rights under the First Amendment to the United States Constitution, including the filing in March, 1968 of a class action in the United States District Court in Chicago, Case No. 68 C 506, now pending on appeal in the United States Court of Appeals for the Seventh Circuit, No. 17284. (Tr. 21-35, incl.).

On October 3, 1968, following its own independent investigation, Life Newspaper, in a full-page expose, "Focus on Life-Land", following a school bus accident in a nearby community where two teen-age girls were killed and eight persons, including six kindergarten children injured, published an article, wherein this situation was reported on at length, including *quotations* therein from *John Lacey, identified therein as "head of the driver education and transportation division of the Cook County school superintendent's office"*, who, as such, was reflected upon thereby. (Tr. 49).

It is clearly shown by Appellant's affidavit in support of his special appearance motion in the Circuit Court (Tr. 15-20), Joy had not only attended the school from the beginning of the term until ejected as set forth in the letter of September 18, 1968 attached thereto (Tr. 38) but had even attended the district's summer program at a cost of $30.00 (Tr. 40); that Joy appeared as set

forth in said letter and continued to regularly go to school until September 30, 1968 on which day, when she regularly appeared and entered the district school bus she was battered and forcibly ejected; that she was then sent to school by cab but was brutally and unconscionably abused and mistreated by Caesare Caldarelli, the assistant principal (a defendant in the U.S. Court action) who subjected her to unconscionable and malicious abuse, discrimination and humiliation, and malicious, wilful and unlawful denial and violation of her rights, including denial of her right to use the public pay phone to phone her parents to tell them what was happening to her, denial of "all privileges", including refusal to allow her to eat lunch or enter the lunch room, treating her as a criminal in effect incommunicado from the outside world, and maliciously slandering and maligning her; that Joy's mother had finally been able, with the help of the Sheriff's police who, at Appellant's request, accompanied her for such purpose, to rescue Joy from said false imprisonment and abuse and unlawful acts by the District through said Caldarelli. (Tr. 41, 42, 17); that on September 30, 1968 appellant wired the Governor and also Lacey's attorney, who is the State's Attorney, and appealed to the Governor's office and to the State's Attorney's office for appropriate action and help, including protection against Caldarelli and getting the District to have Joy's education resumed immediately, without further mistreatment; that just prior to said malicious mistreatment of September 30th, the district's bus people and Caldarelli and others in the district hierarchy and *John Lavey* had come to know of the investigation which had been going on and which resulted in the Focus article (Tr. 17); that although pleas for help had been unavailing, except for the sheriff who rescued Joy from Caldarelli's maltreatment on September 30th,

the Governor's office caused the State Police to begin stopping District #63 busses relative to overcrowding and other offenses about October 3, 1968. (Tr. 18) About October 3, 1968 Appellant phoned Frank Fiorite, Jr., Assistant State's Attorney in Charge of the Suburban Division and thereafter, following other telephone conferences with him and arrangement of materials and exhibits, went to his office and *pleaded with him to get Joy back into school immediately, with appropriate safeguards and protection,* and for appropriate safeguards and protection *against Caldarelli and others at the District,* including a full investigation, preferably by the Grand Jury, of the entire situation; Fiorite did start proceedings concerning the battery on the bus (Tr. 52) but as to the other matters he said *we would have to wait* until he had studied the matter further; that the first Appellant learned of these proceedings was when he learned, sometimes afterward, while he was still waiting for Fiorite to complete his study, that Sheriff's police were under orders to *arrest* Appellant *on a warrant; that Fiorite disclaimed any knowledge* of these proceedings and acknowledged that the same should not have transpired, and on October 21, 1968, Fiorite personally appeared before Judge Patterson and acknowledged this; that *both Fiorite and Appellant were waiting on Lacey to get Joy back to school, as Appellant had all along been seeking to arrange, to no avail due to the State's Attorney's own delays,* "study", etc. (Tr. 18-20) It was not until December 16, 1968 that Lacey finally arranged and *guaranteed* that Joy would not be subjected to any maltreatment and that she would be duly protected from Caldarelli, and that when Joy would appear in school the following day, and thereafter, she would not be subjected to any further humiliation, incident, deprivation,

interference or denial of lawful and constitutional rights, detention or false arrest, denial of right to eat or attend lunch room or enjoy other facilities, materials or books, but rather was to be provided with all books, supplies, materials, equipment and facilities to which she was entitled lawfully and constitutionally, according to understanding had, finally, from Lacey and Fiorite on December 16th (Tr. 42, 43); that John Lacey *knew* that Joy had not even been *absent*, let alone *truant*, from September 4, 1968 to October 7, 1968, and that Joy *was not truant at all* and that there was no permitting of any truancy, wilfully or otherwise, and that *no notice as required by the Article* (Sec. 26-7) (App. B, ..., *infra*) *had been given;* nor did Lacey comply with Sec. 26-8 (App. B, ..., *infra*); that Lacey wilfully ignored the exemptions and conditions of Sec. 26-1 (App. B, ..., *infra*); that Lacey arbitrarily and maliciously sought to also ignore the provisions of Sec. 26-5 (App. B, ..., *infra*); that Lacey arbitrarily, capriciously and for his own malicious motives, wilfully failed to comply with the Article and shut his eyes to the clear statutory and obvious differentiation between *truancy* and *non-attendance*; that Lacey is actually transportation officer for the County Superintendent of Schools, and his duties include supervision of school busses, and Appellant's exposes of the scandalous situations in Cook County and District #63 relative to school busses were involving Lacey; Lacey's doffing his other hat—that of "truant officer"—to plot and effect Appellant's *arrest* and to shut Appellant up—as was attempted herein was the result, making also clear the conflicts of interest herein on both the part of Lacey and also the State's Attorney. (Tr. 9-12).

Chapter 38, Section 114-1(c) and (d), Ill. Rev.Stats. (1967), dealing with "Motion to Dismiss Charge", provide that:

> "(c) If the motion presents only an issue of law the court shall determine it without necessity of further pleadings. *If the motion alleges facts not of record in the case the State shall file an answer admitting or denying each of the factual allegations of the motion.*
>
> (d) When an issue of fact is presented by a motion to dismiss and the answer of the State the court shall conduct a hearing and determine the issues". (emphasis supplied)

On the hearing in the Circuit Court on the Special Appearance Motion to Quash and Dismiss, Appellant expressly stated to the Court:

> "Mr. Schwartz is not my opposing counsel in this case. He is not counsel in this case for the parties. Nor for that matter is Mr. Lacey a party. *This is a matter between the People of the State, as represented by the State's Attorney and myself, and having served this on him this morning, including the fact that I have an affidavit attached, including the fact that I quote in there and cite from Mr. Fiorite and so on and what has transpired, why don't you, your Honor, order them to file an answer, give them to do it and answer these allegations, while under oath. Let them do it. Let Lacey do it. We will clarify these issues.*" (emphasis supplied) (Tr. 98)

This was to no avail, the Court would not so order, and and the State would not so answer. *Clearly*, the affidavit of Appellant in support of his motion, under special and limited appearance, to quash and dismiss (Tr. 15-52a) *must be taken as true*, particularly under the circumstances herein.

Rule 604 of the Supreme Court of Illinois provides:

"RULE 604. Appeals by the State

(a) When State May Appeal. In criminal cases the state may appeal only from an order or judgment, the substantive effect of which results in dismissing a charge for any of the grounds enumerated in section 114-1 of the Code of Criminal Procedure of 1963; arresting judgment because of a defective indictment, information or complaint; *quashing an arrest or search warrant;* or suppressing evidence." (emphasis supplied)

Chapter 38, Section 107-10, Ill.Rev.Stats. (1967) expressly provides:

"107-10. Defective Warrant

A warrant of arrest shall not be quashed or abated nor shall any person in custody for an offense be discharged from such custody because of technical irregularities *not affecting the substantial rights of the accused*".

THE QUESTIONS ARE SUBSTANTIAL

Here, the State *did not appeal from the granting of Appellant's motion, under special and limited appearance, to quash the warrant* (Tr. 197) and said order became and is *final*, and that alone should have been sufficient for the Court to have dismissed the proceedings. The warrant had clearly been issued *without probable cause*, contrary to and in violation of Appellant's rights, including his rights, privileges and immunities under the Constitution of the United States, and this certainly affected *most substantial rights* of Appellant *includ-*

ing his rights under the Fourth Amendment to said Constitution, and these sham "proceedings" have also violated various other rights of Appellant including his rights *to due process under the Fifth Amendment*, his right to be informed of the nature and cause of the accusation, to be confronted with witnesses against him and to have compulsory process for obtaining witnesses in his favor under the *Sixth Amendment*, his right to not be subjected to excessive bail nor cruel and unusual punishment under the *Eighth Amendment*, his rights to *equal protection of the laws* and that *no State shall make or enforce any law which shall abridge the immunities of citizens of the United States, and his rights to due process of law, under the Fourteenth Amendment*, and his rights to freedom of religion and from any laws prohibiting the free exercise thereof (see Tr. 15 and 16) or abridging freedom of speech or of the press or the right peaceably to petition for redress of grievances, under the *First Amendment*, his rights under the Ninth and Tenth Amendments and the *rights and liberties of parents and guardians to direct the upbringing and education of children under their control and to protect them and protect the family* under the *Fourteenth* and other Amendments; *all of which were raised in the court of first instance both in the written special appearance motion* (Tr. 12-14) *and in the hearing thereon* (Tr. 160-163), *and also in the Supreme Court in the Answer in opposition to motion of the State to Dismiss the Appeal* (Tr. 191, 192, 193, 194) *and in the motion for stay of mandate, etc.* (Tr. 214-21) *and in the Notice of Appeal to the Supreme Court of Illinois* (Tr. 55, 56).

Also raised is the federal constitutional question not only of the rights of Appellant as aforesaid but also raised by him in his proper and constitutionally recognized role as father of the minor child, Joy Stein, and as the

father in the family *the constitutional rights of Joy Stein herself, including those of equal protection of the laws and to due process of law, where the "offense" charged by the purported complainant* (Tr. 6) *brands and in effect has already convicted her of truancy,* with the *language of the complaint (as well as that of the statute in question)* peremptorily *declaring* that "defendant wilfully *permitted the said child to persist and continue in her truancy",* thereby necessarily adjudging, *without any due process whatsoever,* that *she had already been guilty of truancy! This is wilfully and capriciously and maliciously done here against a child who had been in attendance, had not been a truant, who had even of her own accord taken extra courses in summer school, and whose only absences were due to religious holidays or deprivation and denial of her rights by the district, the State, the State's Attorney and John W. Lacey.* However, it is respectfully submitted that *no child* ought *thus* be deprived of the *constitutional rights to due process or of his or her other constitutional rights.*

As this Court in effect stated in *In Re Gault,* 387 U.S. 1, *under our Constitution, the condition of being a boy or girl does not justify a kangaroo court,* and that *neither the Fourteenth Amendment nor the Bill of Rights is for adults alone;* and wherein in effect it was established that *the probation officer, in that instance, cannot act as counsel for the child, that his role by statute and in fact is as arresting officer and witness against the child.*

Chapter 37, Section 702-4(1)(a), Ill. Rev. Stats. (1967) provides:

Sec. 702-4. Neglected Minor

(1) Those who are neglected include any minor under 18 years of age;

(a) who is neglected as to proper or necessary support, *education as required by law,* or as to

medical or other remedial care recognized under State law or other care necessary for his well-being, or who is abandoned by his parents, guardian or custodian; or * * * " (Emphasis supplied.)

Chapter 37, Section 704-1(1) and (2), Ill. Rev. Stats. (1967), being part of the Illinois Juvenile Court Act, includes the following among its provisions:

"Sec. 704-1. Petition; Supplemental Petitions

(1) Any adult person, any agency or association by its representative may file, or the court on its own motion may direct the filing through the State's Attorney of a petition in respect to a minor under this Act. The petition and all subsequent court documents shall be entitled 'In the interest of ....., a minor'.

(2) The petition shall be verified but the statements may be made upon information and belief. It shall allege that the minor is delinquent, otherwise in need of supervision, *neglected* or dependent, as the case may be, * * * "

In the "hearing" on the Special Appearance motion, Mr. Schwartz, who had come in to quash subpoenas which had been served on certain District #63 personnel, including Calderelli, and which called for them to also bring attendance records, etc. (Tr. 89), stated as follows:

The Court: In what capacity are you here?

Mr. Schwartz: I am appearing before this court on a motion to quash a subpoena duces tecum issued against Cesare Caldarelli, Harry Trumfio, and James Bowen.

The Court: Are you representing these gentlemen?

Mr. Schwartz: I am representing these three gentlemen, and I am moving the Court to quash these

subpoenas. (Tr. 89 and 90).
(None of said subpoenaed people appeared or produced, nor would the Court compel their attendance).

* * * * *

However, later, after he had in effect taken over the "proceedings" although he was no party thereto, Mr. Schwartz, who had been instigating, plotting and pressing the continuing of said malicious prosecution and the harassment, slander and interference with the constitutional rights of Appellant and Joy Stein, aforesaid, stated to the Court, as follows:

> Mr. Schwartz: * * * I have appeared today, your Honor, because this school district has a duty to consult with the State in this matter. *This child is the responsibility ultimately of the State. The parent has custody of that child, but the law recognizes that if a parent does not exercise that custody properly the child should be taken away from the parents.* * * * (Tr. 178).

It is clear from the foregoing combination of facts that the threats to and violation of the constitutional rights of Appellant and of Joy Stein, his 13 year old daughter, aforesaid, were vicious, wilful, wanton, conspiratorial and malicious, and malevolent indeed — and highly serious. Here is the State depriving them of their rights, including those of equal protection and due process. Appellant pursues his lawful and constitutional rights in seeking to obtain redress, which would involve Lacey's handling of his transportatiton supervisory post under which the District #63's "system" of deprivation of rights to free and safe transportation have been permitted to exist. The newspaper investigates around and prior to September 30th. On September 30th, Joy is ejected from the school

bus and assaulted by the driver, and when she is sent to school by cab, she is "stripped of all privileges," denied the right to eat, held incommunicado from the outside, stripped of her books and locker, insulted and abused, until she is finally rescued by her mother (with the help of the Sheriff's police). *Thus, the District, Caldarelli, Schwartz Lacey, et al., attempt to unlawfully coerce, intimidate, call off and punish Appellant by unconscionably and unconstitutionally, and without any cause whatsoever, inflicting such harm to Appellant's 12 year old daughter.* Then the October 3rd Focus article appears, and the State Police start stopping the busses for violations. *While Appellant is still waiting for the State's Attorney (Fiorite) to do something about this and get Joy's rights to her eduction honored consistent with the protection to her person and her rights to which she is entitled, Lacey puts on his other "'hat", that of a "truant officer" and, in utter and wilful and malicious abuse of the compulsory school attendance law, on October 7th attempts to secure the unlawful, false and malicious arrest of Appellant, in wilful violation of Appellant's rights, falsely and maliciously claiming, presumably under oath, that Joy Stein had been permitted to persist in truancy since September 4th to October 7th! Nor would he do anything to provide Appellant or Joy with the rights and protections to which they were entitled.*

Chapter 14, Section 5, Ill. Rev. Stats. (1967) includes, inter alia, the following as duties of the state's attorney:

"5. Duties of state's attorney

The duty of each state's attorney shall be —

First—To commence and prosecute all actions, suits, indictments and prosecutions, civil and criminal, in the circuit court for his county, in which the people of the state or county may be concerned.

Second—To prosecute all forfeited bonds and recognizances, and all actions and proceedings for the recovery of debts, revenues, moneys, fines, penalties and forfeitures accruing to the state or his county, *or to any school district* or road district of his county; also, to prosecute all suits in his county against railroad *or transportation companies*, which may be prosecuted in the name of the People of the State of Illinois.

Third—To commence and *prosecute* all actions and proceedings brought by any *county officer* in his official capacity.

Fourth—To *defend* all actions and proceedings brought against his county, or against *any county or state officer*, in his official capacity, within his county.

* * *

Sixth—To attend before judges or magistrates and prosecute charges of misdemeanor, for which the offender is required to be recognized to appear before the circuit courts, *when in his power so to do.*

Seventh—To give his opinion, without fee or reward, to any county officer in his county, upon any question of law relating to any criminal or other matter, in which the people or the county may be concerned.

* * *

Tenth—To perform such other and further duties as may, from time to time, be enjoined on him by law. * * * " (Emphasis supplied.)

Chapter 14, Sec. 1, Ill. Rev. Stats. (1967) includes, inter alia, the following:

"1. Oath-Bond

Before entering upon the respective duties of their office, the attorney general and state's attor-

neys shall each be commissioned by the Governor, and shall take the following oath or affirmation:

> I do solemnly swear (or affirm, as the case may be), that I will support the constitution of the United States and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of attorney general (or state's attorney, as the case may be), according to the best of my ability. * * * "

Art. 6, Sec. 21, Ill. Const. (1967) provides:

"Sec. 21. Selection-Salary

> There shall be a state's attorney elected in each county in the year 1964 and every fourth year thereafter for a term of four years. No person shall be eligible for such office unless a citizen and *licensed attorney-at-law* of this State. * * * " (Emphasis supplied.)

In the instant case, we have seen that the State's Attorney of Cook County was defending the County Officer, John W. Lacey, in the Federal Court case brought by Appellant against him (Tr. 36); that the State's Attorney had made stipulations and agreement with Appellant on or about September 18, 1968 that Joy would be transported (Tr. 38), yet on September 30, 1968 Joy was ejected from the bus and assaulted (Tr. 41, 42); that appeals by wife and phone to the State's Attorney on September 30, 1968 for safe transportation and for action and steps necessary to stop violation of law and regulations by District #63 and its officials and agents, including such assaults and deprivation of rights, were unavailing. (Tr. 46). On the other hand, Suburban Chief Fiorito of the State's Attorney's Office, to whom Appellant also personally appealed, was promising Appellant investigation and help and telling Appellant, who was pleading to have Joy immediately returned to school with appropriate safeguards, to *wait*

while he, Fiorite, was studying the matter (Tr. 18); then, while Appellant was waiting for Fiorite to have Joy returned to school with appropriate safeguards, someone else in the State's Attorney's office was having sheriff's police try to *arrest* Appellant for allegedly "permitting" Joy to allegedly "persist" in alleged "truancy"! (Tr. 19) Then, when Fiorite disclaimed said proceedings and said they were wrong and should not have transpired, Fiorite later personally appeared before the Court and acknowledged the same and was present when the Court granted Appellant's motion, under Special Appearance, to quash the warrant, and he, Fiorite, asked for a long date — to December 4th, so he could have time to get his research completed and get the situation worked out so as to do what Appellant had been pleading for since September 30th, namely, to get Joy back to school with adequate safeguards and protection; that even by December, Fiorite had not done anything effectively, still having Appellant and Joy wait (Tr. 19); that in January, 1969 Fiorite was personally served with subpoena to appear on the hearing of January 15 and he agreed to appear and tell said truths, but on said "hearing" both the State and the Court refused to permit, let alone compel, Fiorite to attend and tell the truth, although Fiorite had come to the Court but was kept in another room and inaccessible for such testimony as to said truths. (Tr. 193).

Tr. 81:

> The Defendant: I can not be waiving — we know that this is as elementary as elementary can be. Number one, there was an agreement at all times involved here with — let's get Frank Fiorite out here.
>
> The Court: No, we won't get Frank Fiorite out here.

The Defendant: Frank Fiorite is here under subpoena.

The Court: Not at this time.

The Defendant: Well, I subpoenaed him —

The Court: Yes, you subpoenaed him.

The Defendant: —because he is the head of the Suburban Division, and he had an agreement with me. He kept my child out of school by failure to act.

The Court: That is something you should bring out at the proper time.

The Defendant: I am bringing it out now.

The Court: No, you are not bringing it out at this time.

Tr. 83:

The Defendant: This was serious enough — this was serious enough where this court and the chief judge of this court took knowledge of what had happened then and they would not permit the arrest to take place that they had so carefully contrived. Now, why am I not entitled to have that now? Frank Fiorite told me that he will come here and testify and tell the truth. Frank Fiorite is the man that came here and asked Judge Patterson for a long date.

* * *

The Defendant: And Frank Fiorite told Judge Patterson what I am saying is true. I had asked for a grand jury investigation on the handling by the school district of these various matters, including criminally unsafe busses, including a matter where they tried to shut up a taxpayer, tried to shut up a citizen and use

his child to do that. This child was battered by their bus driver. There is a criminal case pending against that bus driver. This occurred on the 30th day of September. The child has been in school before that.

Tr. 83:

This case fails on its face, and where you as a judge see that there is an affidavit before the court, a purported complaint that is false on its face and that it does not properly charge anything on its face, how can you charge a man with a penalty provision, with a penalty section? That is all that is, that 26-10. Did he comply with 26-7? Did he comply with 26-8? You said that you read that motion.

Tr. 121:

The Defendant: * * * let the record show, if it does not, that counsel here, the Assistant State's Attorney, is sitting out here, and I presume that Fiorito is still in the back room —

The Court: I have no idea where Mr. Fiorito is.

The Defendant: He told me that he would come out here. He told me to subpoena him for this court.

Mr. Witkowski (Ass't State's Atty.): I don't know how that is material.

The Defendant: It is very material, because these are facts peculiarly known to him, and he as a matter of fact initiated a proceeding against the bus driver for the battery.

Tr. 123:

The Defendant: Now, this is the type of treatment that was being given, holding her where she can't call home. Mind you, there had been payment tendered.

She had been sent to school; she had been battered and thrown off and sent by cab. And I show here — this can be verified, Judge — I show here copies of wires that went that day to the Governor, to the State's Attorney, his boss, and to Mr. Coman, telling them what happened, and I asked for protection for this child.

I then went out and saw Mr. Fiorite: "I want this child back in school, and I want protection for her. I want Joy to have protection. I want her back in school now, and I want something done. I will sign any complaint, or take this thing before the grand jury. Let's have an investigation of this whole (Tr. 124) damned business. But I don't want that child deprived of her schooling, and I don't want her beat up and I don't want her deprived of her right to eat at that school like anybody else."

And Fiorite heard me out and started looking in book and so on, and he said, "One thing I can do right away is I will start proceedings against this bus driver for battery." He says, "On the rest of this I wish I could tell you how to do it right now", but he told me that he had called Lacey and Lacey knew about this.

Mr. Witkowski: Your Honor, hearsay I did not object to, but we are talking about hearsay on hearsay.

(This Although The State's Attorney And The Court Were Refusing To Let Fiorite Come Into The Room Although Subpoenaed And Although Fiorite Had Agreed To Tell The Truth And Although Fiorite Was In The Next Room But The Court And State's Attorney Would Not Only Not Compel Him To Testify But Would Not Permit Him

To; And All Of This Despite The Fact That The State Would Not File Any Answer To Appellant's Affidavit, Nor Would The Court Order Them So To Do).

The Defendant: Now, why don't you let Mr. Fiorite out of his cage or his confinement back there and let me put him on the stand, and he will tell you.

The Court: Finish your statement first.

The Defendant: He told me to wait. "You go on. I wish I could do it right now but I have to research this and I have to see what steps we can take about this type of thing, and I will be in touch with you."

Tr. 131:

The Defendant: And incidentally, on the 30th day of September we not only wired — and Dan Coman (the Assistant State's Attorney also representing Lacey) is an honorable man — I am sure he will not lie about this; he did not lie about it then; he did not go back on his word. He was called about what transpired. He said, "Well, that was my agreement then. That is still my agreement", and he said, "You did nothing wrong; you did it exactly right, and this is wrong." And he said that he was taking the wire — talked with my wife — he was taking the wire and he was going in as soon as he hangs up to Lacey.

It is clear from the foregoing and from the record that a very serious question exists and is raised (Tr. 194), concerning the obvious conflicts of interest on the part of the State's Attorney; which serve to do violence to and indeed destroy, the federally guaranteed constitutional rights of the People (both large and small "p"), including, in this instance, Appellant. There can be no due process, equal protection of law, or, indeed, justice at all, or any

semblance thereof or of orderliness of proceedings at all, where such shenanigans, as are so obvious here, are indulged in by the State's Attorney, who is supposed to be the attorney for the people and the champion on truth, justice and fair play. To the contrary, it is suggested that all of said "proceedings" and conduct afford the most obvious inference of skullduggery in the halls of justice, conspiracy, and improper conduct, and disregard for the oath of office and of the professional conduct which must be expected of and be forthcoming from State's Attorneys. In this connection, it must be borne in mind that the State's Attorney is the keeper of the keys to the Grand Jury, the advocate, adviser and statutory prosecutor for officials, yet the statutory prosecutor for the public, and at the same time counselor to those in power politically; being also under oath to support and defend the United States Constitution, and also being bound as a lawyer by the canons of ethics, including, inter alia, requirements for candor and fairness, the injunctions against representing adverse interests, etc. What was in effect stated to apply to the probation officer in *In Re Gault* is obviously applicable here. How can a 13 year old child as Joy, or indeed Appellant as her father and as a citizen, expect to be able to rely on the State's Attorney for protection and action and full and fair consideration of Complaints or much required investigation of a District's practices, or its wrongful acts in concert with others, including County and State officials and school bus people who deal with them or are under their control, where the State's Attorney is by statute and in fact representing the county and state officials and various others of said persons through or for them? Under such conditions, the State's Attorney becomes and is the defender of the "system" complained of, and the prosecutor and indeed persecutor of the child, parent and citizen, as here.

It is respectfully submitted that said entire "action" and proceedings are and have been utter shams, and kangaroo in nature. They bear absolutely no semblance of due process or equal protection or justice. It is noted that the State's Attorney, despite all of the foregoing, (1) waited until March 18, 1969, nearly two months after the January 20, 1969 notice of appeal, and after Appellant had filed his designation for the full record and gone to the time and expense of securing transcript and ordering the full record, before the State's Attorney first presented his motion to dismiss, (2) that although knowing the foregoing facts as well as the contents of the notice of appeal (Tr. 55, 56) and that insofar as this Appellant is concerned, and under the facts herein, as aforementioned, Appellant had the right, and indeed was compelled to stand on his Special Appearance motion and appeal and that thus, and particularly in view of the statutory waiver of errors in the Circuit Court's denial which would have necessarily ensued had Appellant participated further in said sham and kangaroo proceedings, said denial was indeed a final order in fact, said State's Attorney; in order, obviously, to further harrass, injure, attempt to intimidate, and seek to still Appellant and further inflict such sham, kangaroo and unconstitutional violence on Appellant's rights as aforesaid, and in order to keep Appellant from being able to file any brief or full record or have any orderly procedure in the Supreme Court of Illinois either, filed his motion to dismiss the appeal on the sole ground that allegedly this was not a final order. Actually, the State's Attorney should not have made that appeal necessary or this one either, as he was and is duty bound, under all circumstances herein, to have ceased and desisted a long time ago from the persecutive "prosecution" he has so tenaciously been pursuing herein, under the unconscionable circumstances hereinbefore set forth.

CONCLUSION

This appeal presents substantial federal constitutional issues, and the Illinois highest Court having barred the door there as it did herein, it is respectfully and truly *Prayed* that this Court note probable jurisdiction herein.

Respectfully submitted,

YALE STEIN, *Pro Se*.

APPENDIX A

UNITED STATES OF AMERICA

STATE OF ILLINOIS)
) ss.
SUPREME COURT)

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of March in the year of our Lord, one thousand nine hundred and sixty-nine, within and for the State of Illinois.

PRESENT:

Roy J. Solfisburg, Jr., Chief Justice
Justice Walter V. Schaefer
Justice Byron O. House
Justice Thomas E. Kluczynski
Justice Ray I. Klingbiel
Justice Robert C. Underwood
Justice Daniel P. Ward
William J. Scott, Attorney General
Robert G. Miley, Marshal
Justin Taft, Clerk

Be It Remembered, that, to-wit: on the 25th day of March 1969 the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

People State of Illinois,

Appellee,

No. 42012 vs.

Yale Stein,

Appellant.

Appeal from Circuit Court Cook County
(Municipal Division) 68 MC3 1883

And now, on this day, the Court having diligently examined and inspected as well the record and proceedings aforesaid, as the motion of the appellee to dismiss this appeal and being fully advised of and concerning the premises, are of the opinion that the said appeal is not well taken.

Therefore, it is considered and ordered by the Court that said appeal be and the same is hence dismissed.

I, Justin Taft, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of Said Court this 16th day of April, 1969.

/s/ Justin Taft

Clerk,

Supreme Court of the State of Illinois.

(SEAL)

APPENDIX B

(Chapter 122, Ill. Rev. Stat. (1967))

122 § 26—1

The School Code.

ARTICLE 26.

Pupils—Compulsory Attendance

Sec.

26—1. Compulsory school age—exemptions.

26—2. Enrolled pupils below 7 or over 16.

26—3. Teachers furnished list—report of non-attendance—report of persons not on list.

26—4. District Truant officers.

26—5. Duties of truant officers.

26—6. List and reports in districts employing truant officers.

26—7. Notice to custodian—notice of non-compliance.

26—8. Determination as to compliance—complaint before court of record.

26—9. School officers and teachers to assist truant officers.

26—10. Fine for non-compliance.

26—11. Punishment for certain offenses.

§ 26—1. *Compulsory school age—Exemptions*

Whoever has custody or control of any child between the ages of 7 and 16 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term; Provided, that the following children shall not be required to attend the public schools:

1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language;

2. Any child who is physically or mentally unable to attend school, such disability being certified to the county or district truant officer by a competent physician; or who is excused for temporary absence for cause by the principal or teacher of the school which the child attends;

3. Any child necessarily and lawfully employed according to the provisions of the law regulating child labor may be excused from attendance at school by the county superintendent of schools or the superintendent of the public school which the child should be attending, on certification of the facts by and the recommendation of the school board of the public school district in which the child resides. In districts having part time continuation schools, children so excused shall attend such schools at least 8 hours each week;

4. Any child over 12 and under 14 years of age while in attendance at confirmation classes. 1961, March 18, Laws 1961, p. 31, § 26—1; 1961, May 15, Laws 1961, p. 500, § 1.

§ 26—2. *Enrolled pupils below 7 or over 16*

Any person having custody or control of a child who is below the age of 7 years or above the age of 16 years and who is enrolled in any of grades 1 through 12, in the public school shall cause him to attend the public school in the district wherein he resides when it is in session during the regular school term unless he is excused under paragraphs 2, 3, or 4 of Section 26—1. 1961, March 18, Laws 1961, p. 31, § 26—2; 1961, May 15, Laws 1961, p. 500, § 1.

§ 26—3. *Teachers furnished list — Report of non-attendance — Report of persons not on list*

The clerk or secretary of the school board of all school districts except those employing district truant officers shall furnish the teachers at the beginning of the school-year a list of the names and addresses of the children living in the district who come under the provisions of this Article and of persons having custody or control of such children. Teachers shall at the opening of school and at other times when required by the county superintendent of schools compare the list with the enrollment of the school and report to the county superintendent of schools the names of persons having custody or control of children included under the provisions of this Article who are not in regular attendance at the public school, and the names of such children and their ages, stating in each case, if known, the cause of such absence. The report shall also contain the names of any other persons who were not enumerated in the list at the beginning of school and who have the custody or control of children not attending school. The county superintendent shall, without delay, place such information at the disposal of the county truant officer. 1961, March 18, Laws 1961, p. 31, § 26—3.

§ 26—4. *District Truant officers*

Before entering upon the duties of his office, each district truant officer appointed by a school board shall give bond with two or more sufficient sureties, or with a corporate surety, to be approved by the county superintendent of schools of the county in which the district, or the greatest portion thereof is located, in the penal sum of $1,000 payable to the People of the State of Illinois, conditioned that he will faithfully discharge all the duties required, or to be required of him by law as such truant officer; which bonds shall be filed in the office of the County Superin-

...cident at schools and entered upon the records of such office. 1961, March 1st, Laws 1961, p. 31, § 26. 4.

§ 26. 5. Duties of truant officers

The truant officer of the school district, whenever notified by the superintendent, teacher, or other person of violations of this Article, or the county truant officer, when required by the County Superintendent, shall investigate all cases of truancy or nonattendance at school in their respective jurisdictions, and if the children complained of are not exempt under the provisions of this Article, the truant officer shall proceed as is provided in this Article. The county truant officer, with the county and the district truant officers within their respective districts, shall in the exercise of their duties be conservators of the peace and shall keep the same, suppress riots, routs, affray, fighting, disorder of the peace, and prevent crime; and may arrest offenders or cause offenders to be brought before proper officials for trial or examination. 1961, March 1st, Laws 1961, p. 31, § 26. 5.

§ 26. 6. List and reports to district employing truant officer

The school district which employs truant officers the clerk or secretary of the school board shall, at the beginning of each school year, furnish a copy of the last school census to the superintendent of schools or principal teacher in the district, together with the names and addresses of the truant officers in the district, and the superintendent or principal teacher shall compare the census list with the enrollment of the school or schools and, from time to time, report to the proper truant officer the names and addresses of persons having custody or control of children included under the provisions of this Article who are not in regular attendance at public schools and also the names of persons

having custody or control of children who are not in regular attendance at school and who have not graduated in the census list. 1961, March 1st, Laws 1961, p. 31, § 26-6.

§ 26-7. Notice to custodian—Notice of non-compliance.

If any person fails to send any child under his custody or control to some lawful school the truant officer shall, as soon as practicable after he is notified thereof, give notice in person or by mail to such person that such child shall be present at the proper public school on the day following the receipt of such notice. The notice shall state the date that attendance at school must begin, and that such attendance must be continuous and consecutive in the district during the remainder of the school year. The truant officer shall at the same time that such notice is given notify the teacher or superintendent of the proper public school thereof and the teacher or superintendent shall notify the truant officer of any non-compliance therewith. 1961, March 1st, Laws 1961, p. 31, § 26-7.

§ 26-8. Determination as to compliance—Complaint before court of record.

All truant officers, after giving the notice provided in Section 26-7 to any person having custody or control over the child or children not attending school shall determine whether the notice directs compliance with, and if not complied with they shall thereupon make complaint against such person before the municipal court in cities with a population exceeding [illegible] or in the circuit court in the county where such person resides or before any justice of the peace, police magistrate of the city, town, ship, incorporated town or village in which such person resides for failure to comply with the provisions of this Article. 1961, March 1st, Laws 1961, p. 31, § 26-8.

APPENDIX C

APPENDIX D

§ 29-1. *Free transportation of pupils.*

School boards may provide free transportation for pupils, as prescribed in Section 10-22.32. 1961, March 18, Laws 1961, p. 31, § 29-1.

§ 29-2. *Transportation of pupils less than one and one-half miles from school.*

School boards may provide transportation for pupils living less than one and one half miles as measured by the customary route of travel from the school attended and may make a charge for such transportation in an amount of not to exceed the cost thereof, which shall include a reasonable allowance for depreciation of the vehicles so used. 1961, March 18, Laws 1961, p. 31, § 29-2.

§ 29-3. *Transportation in school districts.*

School boards of community consolidated districts, community unit districts, consolidated districts and consolidated high school districts shall provide free transportation for pupils residing at a distance of one and one half miles or more from any school to which they are assigned for attendance maintained within the district except for those pupils for whom the school board shall certify to the Superintendent of Public Instruction that adequate transportation for the public is available.

For the purposes of this Act "adequate transportation for the public" shall be assumed to exist for such pupils as can reach school by walking, one way, less than 1½ miles irrespective of the distance the pupil is transported by public transportation. 1961, March 18, Laws 1961, p. 31, § 29-3. 1961, Aug. 15, Laws 1961, p. 3371, § 1.

§ 39 .5. *Reimbursement by State for transportation*

Any school district, including any non high school district, maintaining a school which meets the standards for recognition as established by the superintendent of Public Instruction which provides transportation meeting the standards of safety, comfort, convenience, efficiency and operation prescribed by the Superintendent of Public Instruction for resident pupils in any of grades 1 through 12 who reside at least 1½ miles as measured by the customary route of travel, from the school attended, shall be reimbursed by the State for 50% of the cost of the transportation, or the following amount for each such pupil transported throughout the school year, whichever is smaller:

(a) For districts with an area of less than 10 square miles per pupil transported, $16 per pupil.

(b) For districts with an area of less than 20, but 10 or more square miles per pupil transported, $20 per pupil.

(c) For districts with an area of less than 30 but 20 or more square miles per pupil transported, $24 per pupil.

(d) For districts with an area of less than 50 but 30 or more square miles per pupil transported, $28 per pupil.

(e) For districts with an area of 50 or more square miles per pupil transported, $32 per pupil.

Claims for reimbursement shall be made by the district in which the pupils transported reside and shall show the total resident enrollment and number of pupils transported. The claim shall be certified by the person making the claim that the information and computations are correct.

Claims for reimbursement that include children who attend any school other than a public school shall show the number of such children transported.

Claims for reimbursement under this section shall not be paid for the transportation of pupils for whom transportation costs are claimed for payment under other sections of this Act.

The Superintendent of Public Instruction shall prescribe uniform regulations for determining the above standards and shall prescribe forms of cost accounting and standards of determining reasonable depreciation.

On or before July 10, annually, the president and the secretary of the district shall certify to the county superintendent of Public Instruction the district's claim for reimbursement for the school year ended on June 30 next preceding. The county superintendent of schools shall check all transportation claims to ascertain compliance with the prescribed standards and upon his approval shall certify not later than July 25 to the Superintendent of Public Instruction the county report of claims for reimbursements. The Superintendent of Public Instruction shall check and upon approval he shall transmit by September 15 the state report of claims to the Auditor of Public Accounts and prepare the vouchers showing the amounts due respective counties for their district reimbursement claims.

If the amount appropriated for transportation reimbursement for any year is insufficient it shall be apportioned on the basis of the claims approved. 1961, March 18, Laws 1961, p. 31, § 29-5; 1961, Aug. 15, Laws 1961, p. 2371, § 1.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NO. 502

YALE STEIN,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS and JOHN W. LACEY,

Appellees.

On Appeal from the Supreme Court of the State of Illinois

MOTION TO DISMISS THE APPEAL
And
OBJECTIONS TO PETITION FOR WRIT OF CERTIORARI

EDWARD V. HANRAHAN,
State's Attorney of Cook County,
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